

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)	
)	
CITY OF ANAMOSA,)	
Public Employer,)	
)	
And)	CASE NOS. 102250 & 102251
)	
CHAUFFEURS, TEAMSTERS & HELPERS)	
LOCAL 238,)	
Petitioner/Employee Organization.)	

PROPOSED DECISION AND ORDER

On October 12, 2018, Chauffeurs, Teamsters and Helpers Local 238 (Local 238) filed two petitions with the Public Employment Relations Board (Board) pursuant to Iowa Code section 20.13 and PERB rules 621—4.6 and 4.7(20). Local 238, through a unit clarification petition, requests clarification whether the sergeant position is within the existing bargaining unit (Case No. 102251). If it is determined that the position is not within the existing unit, Local 238 seeks to amend the bargaining unit, through an amendment petition, to specifically include the sergeant position into the bargaining unit (Case No. 102250).

The City resists both petitions and contends the sergeant is either a “first assistant” to the police chief or a supervisory employee and thus excluded from the bargaining unit pursuant to Iowa Code section 20.4.

The Board consolidated these two cases on October 18, 2018. The hearing was held on December 3, 2018, and the parties submitted briefs on January 25,

2019. The parties were represented by attorneys Kristymaire Shipley for the City and Jill Hartley for Local 238.

Pursuant to Iowa Code section 17A.14(4), official notice was taken of the cases filed with regards to the original certification (PERB Case No. 5685) in which the International Association of Machinists (IAM) was certified as the exclusive bargaining representative, the decertification petition which removed IAM as the certified employee organization (PERB Case No. 6713), and the subsequent certification of Teamsters Local 238 (PERB Case No. 102187) as the exclusive bargaining representative.

FINDINGS OF FACT

The City of Anamosa is a public employer within the meaning of Iowa Code section 20.3(10) and Chauffeurs, Teamsters & Helpers Local 238 is a certified employee organization within the meaning of Iowa Code section 20.3(4).

In 1997, IAM was certified by the Board to be the exclusive bargaining representative for the following bargaining unit:

INCLUDED: All regular full-time and part-time police officers; all regular full-time employees in the following classifications: Administrative Clerk, Emergency Services Clerk.

EXCLUDED: Elected and appointed officials, City Administrator, City Clerk, City Engineer, City Attorney, City Treasurer, Police Chief, Ambulance Director, Library employees and Director, Parks and Recreation Department employees, Supervisors and Director, Public Service Department employees, Supervisors and Director, confidential employees and all others excluded by Section 20.4 of the Public Employment Relations Act.

The bargaining unit was made up of a senior police officer, three police officers, a reserve police officer, an administrative clerk located in the City Clerk's office

and an emergency services clerk who reported to the City Administrator. The Board decertified IAM as the exclusive bargaining representative for the bargaining unit in October, 2003.

It is unclear when the sergeant position was created. In May, 2018, Local 238 filed a bargaining representative certification petition. When the City provided the required lists of employees, no employee was identified as a sergeant on these lists. Local 238 was certified by PERB on September 26, 2018, as the exclusive bargaining representative for the same bargaining unit description as described in 1997 when the unit was determined. At the time of certification, the bargaining unit consisted of police officers and an emergency services clerk.

The City of Anamosa has experienced recent turnover in both the city administrator and police chief positions. The current City Administrator, Jacob Sheridan, began employment on February 28, 2018. Shortly thereafter, due to the police chief's departure, Sergeant Travis McNally was appointed interim chief, "sergeant with extra responsibility to be overseen by City Administrator Sheridan." Sergeant McNally was interim chief for approximately three months until Jeremiah Hoyt was appointed chief of police and assumed the command of the department sometime in May, 2018.

The administrative duties are carried out by City Administrator Sheridan who oversees the general operations of the City and is involved in the "larger matters" of the various city departments. The city administrator reviews and approves departmental policies and job descriptions before changes are implemented by the department, and it is within his authority to make

modifications. Additionally, the city administrator develops the city-wide personnel policies with consultation from the various city departments.

The police department is commanded by Chief of Police Jeremiah Hoyt who reports to City Administrator Sheridan. The chain of command for the police division is chief of police, sergeant, patrol officer and part-time patrol officer. The police department employs ten employees: one sergeant, six patrol officers and one part-time officer. The officers report to Sergeant McNally who, in turn, reports to Chief Hoyt. In addition, there is one employee in the Emergency Services Administration; the administrative assistant who also reports to Chief Hoyt.¹

At the time of hearing, Police Chief Hoyt had been Anamosa's police chief for approximately six months. Sergeant McNally has been employed by the department since 2009, promoted to sergeant in 2015, and was interim chief for approximately three months prior to the appointment of Chief Hoyt.

There is very little evidence in the record as to the duties and responsibilities of the police chief. During his six months' tenure, Chief Hoyt has reviewed and revised some of the department's standard operating procedures (SOPs) and job descriptions. OP101 is the department's operational procedure which delineates the organizational structure and duties of the police division. Chief Hoyt revised this policy to reflect current practice and changed its title. PA123 is the department's SOP which pertains to the chain of command and seniority. Chief Hoyt also modified this procedure so that it reflected current

¹ As reflected by Exhibit 2: Organizational Chart/Chain of Command.

practice. Additionally, he moved “some things around that were redundant and/or put them under different headings.” As to procedure PA102 which is the department’s SOP with regards to complaints against officers and employees, the chief drafted this procedure using his previous employer’s procedure since the department’s procedure was outdated. Chief Hoyt also made minor changes (corrected spelling, grammar and punctuation) to both the police sergeant and patrol officer job descriptions. In revising the SOPs and job descriptions, the chief did not seek input from the police sergeant. City Administrator Sheridan reviewed these documents, but no changes were made.

There is no evidence in the record as to the role the police chief plays in the formulation of the police department’s budget. Additionally, there is little evidence regarding budget administration. During the previous chief’s tenure, a new patrol car was planned for and budgeted, however, the record is silent regarding the budgetary process utilized in the acquisition of this large expenditure. Although it is clear that Chief Hoyt has spending authority and has exercised this authority, it is unclear as to the amount of his spending authority. According to Chief Hoyt, if the purchase was considered to be a capital expenditure, then he would advise the City administrator to ensure that it was within his budgetary authority.

Patrol officers work one of three twelve hour shifts; 6:00 a.m. to 6:00 p.m., 3:00 p.m. to 3:00 a.m., and 6:00 p.m. to 6:00 a.m. The police chief works the day shift. The sergeant primarily works the day shift so he can work closely with the chief, but his schedule is flexible in order to be conducive to departmental

needs. During the day there may be up to four officers on duty depending upon Chief Hoyt's and Sergeant McNally's schedules.

According to operational procedures, the sergeant performs administrative duties assigned by the chief, directs the activities of the patrol officers and performs patrol duties. Chief Hoyt estimated that Sergeant McNally's time is split evenly between the general law enforcement duties and non-traditional police duties. There is no evidence that the sergeant assumes the responsibilities of the chief when he is absent.

The sergeant schedules the patrol officers. The initial preparation of the schedule is routine since officers generally do not change shifts unless a vacancy occurs. McNally simply enters the information into the "When I Work" software program, and the program creates a schedule applicable for up to six months to a year in advance. Additionally, the schedule's alteration is also routine and clerical. When officers request time off, McNally adjusts the schedule by blocking off the requested time periods. According to McNally, the vacancy is either filled by himself, a "float car," or "doesn't get filled because two officers, essentially, can cover the City during a 24-hour period." Although the chief testified that the sergeant has the authority to grant or deny time off requests, the City did not provide specific examples that McNally has actually exercised this authority.

As to overtime, the department has a standing order that if an officer is at the end of a scheduled shift and needs to complete an assignment, then the officer continues the assignment, in overtime, until the assignment is complete

“to the fullest extent required by the courts.” There is no evidence in the record that the sergeant has approved overtime requests.

Because McNally schedules the officers, he schedules the required training which is essentially a routine function since the training must be scheduled when it is available and is governed by adequate staffing levels. If an officer requests training or McNally believes the training would be beneficial, the training is scheduled after the chief determines that the training fits within the department’s budget. In the future, McNally would like to expand the department’s internal training regimen in order for officers to keep current on the various aspects of law enforcement.

In the police department’s chain of command, patrol officers report to the sergeant. The job description indicates that the police sergeant “assists and provides guidance to subordinate officers in responding to calls, instructing of proper procedures and advising law enforcement problems.”² No specific examples were given regarding the exercise of this authority, and there is no evidence in the record that suggests the sergeant regularly directs the work of the officers. When officers have sought McNally’s advice or guidance concerning appropriate course of action, he views these instances as officers seeking his opinion or how best to proceed due to his lengthy tenure on the job. Additionally, officers have also contacted him “as their sergeant seeking advice from command to proceed with certain direction that –forcing entry into a residence and look for permission to do that, those kinds of tasks.” There is no evidence in the record

² Exhibit 2: PA128 – Job Description – Police Sergeant, #6.

that “looking for permission” resulted in the issuance of specific orders or directions to the inquiring officer.

Since Chief Hoyt’s appointment, the department has hired one employee, a patrol officer, using a committee process. Although the job description does not specify that the sergeant participates in the hiring of officers, Sergeant McNally was involved in this process. The first round of interviews was conducted by a committee made up of Chief Hoyt and Sergeant McNally. Based upon the interviews, the applicant pool was narrowed down to two applicants through “mutual consult of each other’s thoughts, ideas and opinions.” For the second round, job applicants were interviewed by a committee made up of Chief Hoyt, Sergeant McNally, City Administrator Sheridan and the high school principal. After completion of the interviews, each committee member shared their input as to likes and dislikes concerning both candidates, and the committee collectively agreed upon one candidate. Based upon their decision, a resolution to hire was submitted to the City Council which was approved.

As to discipline, the City uses progressive discipline, which consists of a verbal warning, which is not discipline, written warning, various levels of suspensions, and termination. The only disciplinary actions taken in the department have been non-disciplinary verbal warnings. Although the chief testified that the sergeant has the authority to issue both verbal and written warnings, there are no examples in the record of Sergeant McNally issuing either type of warning. The existing job description does not specifically reference the sergeant’s authority with regards to discipline, but instead notes that the

sergeant “corrects the activity of the patrol officers.”³ Under the previous chief, McNally coached an employee concerning the need to turn in time cards in a timely manner. Additionally, McNally has reminded officers to complete reports or clean out their patrol cars.

CONCLUSIONS OF LAW

Local 238’s petition in Case No. 102251 seeks clarification concerning whether the sergeant is presently included within the Teamsters-represented bargaining unit. Alternatively, in Case No. 102250, Local 238 seeks to amend the existing bargaining unit to add the sergeant if it is found that the position is not presently included in the bargaining unit.

Unit clarification and amendment proceedings have different functions. An amendment proceeding provides a vehicle for adjusting the composition of the bargaining unit, whereas, the unit clarification proceeding is intended to clarify the composition of the bargaining unit. *Saydel Cmty. School Dist. & Pub., Prof’l & Maint. Emps.*, 99 HO 6056 at 15; *E. Iowa Cmty. Coll. Higher Educ. Ass’n. & E. Iowa Cmty. Coll. Dist. (Merged Area IX)*, 82 PERB 2110 at 3. The clarification petition is not brought to affect change, but to discern the inclusion or exclusion of job classifications or employees in the bargaining unit as it presently exists. *Woodbury Cty. & Commc’ns. Workers of Am., Local 7177*, 15 PERB 8792, 8794 & 8795 at 12; *Cedar Rapids Cmty. School Dist. & Service Emps. Int’l. Union, Local 199*, 15 ALJ 8707 & 8708 at 11.

³ Exhibit 2: PA128 – Job Description – Police Sergeant, #4.

Clarification of Bargaining Unit:

In a unit clarification proceeding, a determination is made whether the wording of the present bargaining unit description encompasses the position at issue. *Woodbury Cty.*, 15 PERB 8792 8794 & 8795 at 13; *Cedar Rapids Cmty. School Dist.*, 15 ALJ 8707 & 8708 at 11; *E. Iowa Cmty. Coll. Higher Educ. Ass'n.*, 82 PERB 2110 at 3. The existing bargaining unit description may unambiguously resolve the question of the position's status within the bargaining unit. *Cedar Rapids Cmty. School Dist.*, 15 ALJ 8978 & 8708 at 11. When this occurs, the inquiry ends. *Woodbury Cty.*, 15 PERB 8792 8794 & 8795 at 13; *E. Iowa Cmty. Coll. Higher Educ. Ass'n.*, 82 PERB 2110 at 3-4.

If the bargaining unit description is ambiguous as to the position's status, then examination of other probative factors is required. *Woodbury Cty.*, 15 PERB 8792 8794 & 8795 at 13; *Cedar Rapids Cmty. School Dist.*, 15 ALJ 8978 & 8708 at 11; *E. Iowa Cmty. Coll. Higher Educ. Ass'n.*, 82 PERB 2110 at 4. In *Eastern Iowa Community College District (Merged Area IX)*, the Board specified two relevant factors that might be probative when determining whether a position is included or excluded from the bargaining unit: whether the position has traditionally been treated as being included or excluded from the existing bargaining unit and whether similar positions or persons performing similar duties are included or excluded from the bargaining unit. 82 PERB 2110 at 4; *Saydel Cmty. School Dist.*, 99 H.O. 6056 at 18. When examining these relevant factors, the Board stated the focus was on:

Whether the position is and has been in the bargaining unit, not whether it should be or should have been placed in the bargaining unit.

E. Iowa Cmty. Coll. Higher Educ. Ass'n., 82 PERB 2110 at 4; *Cedar Rapids Cmty. School Dist.*, 15 ALJ 8978 & 8708 at 11.

The bargaining unit description does not specifically include the sergeant's position. Thus, the sergeant's inclusion is not unambiguously resolved by the language of the present bargaining unit description. As a result, examination of other factors which might be probative of whether the position falls within the existing bargaining unit is required. *Saydel Cmty. School Dist.*, 99 H.O. 6056 at 18; *E. Iowa Cmty. Coll. Higher Educ. Ass'n.*, 82 PERB 2110 at 4.

Local 238 states in its unit clarification petition that the sergeant "is in effect a police officer by his primary role and definition," and thus included in the present bargaining unit description. However, when considering how the position has been treated, I cannot agree with the Local 238's position. Both parties agree that this position was not in existence when the bargaining unit was initially created. Further, Local 238 did not treat this position as included in the bargaining unit during the representation proceeding that certified Local 238 as the exclusive bargaining representative. The PERB case file reveals that when the City provided the lists of employees as required by PERB rules, no employee identified as a sergeant was included in either employee list.⁴ Thus, I

⁴ In this case, the City provided two lists; the list to determine the show of interest provided for in PERB rule 4.3(3) and the voter eligibility list provided for in PERB rule 5.2(2).

cannot conclude that the position has traditionally been treated as being in the unit.

Nor can I conclude that there are similar positions or persons who perform similar duties to the police sergeant included within the bargaining unit. Although, the sergeant clearly performs the duties of the patrol officers, this position has additional responsibilities not shared by the officers. These duties include scheduling, providing direction to officers when questions regarding law enforcement duties arise, and hiring responsibilities.

Accordingly, I conclude that the sergeant position is not and has not been included within the presently constituted Local 288 represented bargaining unit.

Having found that the bargaining unit does not presently include the sergeant position, the inquiry shifts to whether this position is presently excluded from the bargaining unit. Once again, the question of the sergeant's position is not unambiguously resolved by an examination of the present bargaining unit description since the sergeant position is not explicitly excluded from the bargaining unit. *City of Waverly & Int'l. Bhd. of Elec Workers, Local No. 288*, 00 HO 6093 & 6094 at 12.

The City alleges that the sergeant is a "first assistant" or a supervisory employee and thus is excluded from the bargaining unit pursuant to Iowa Code section 20.4(2). The bargaining unit description specifically excludes "first assistant" and supervisory employees, classes to which the City maintains the sergeant belongs. As a result of this uncertainty, a determination of whether the position of sergeant is excluded under Iowa Code section 20.4 as a "first

assistant” or as a supervisory employee must be made in order to determine whether this position is and has been excluded from the bargaining unit. *City of Waverly*, 00 HO 6093 & 6094 at 12. This section provides in relevant part:

20.4 Exclusions.

The following public employees shall be excluded from the provisions of this chapter:

2. Representatives of a public employer, including the administrative officer, director or chief executive officer of a public employer or major division thereof as well as the officer’s or director’s deputy, first assistant, and any supervisory employees. “*Supervisory employee*” means any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgment....

PERB interprets the exclusions contained within section 20.4(2) narrowly because chapter 20 “is written in broad terms in order to allow a large number of public employees to be eligible for coverage under its provisions.” *Iowa Ass’n. of School Boards v. PERB*, 400 N.W.2d 571, 576 (Iowa 1987); *Cedar Rapids Cmty. School Dist.*, 15 HO 8707 & 8708 at 15; *City of Eagle Grove and Teamsters Local 238*, 12 PERB 8459 at 6. Because the party asserting exclusions under section 20.4(2) bears the burden of establishing that the exclusion applies, the City bears the burden of establishing that the police sergeant is and has been excluded from the bargaining unit as a “first assistant” to the police chief or as a supervisory employee. *Cedar Rapids Cmty. School Dist.*, 15 HO 8707 & 8708 at 15; *City of Eagle Grove*, 12 PERB 8459 at 6.

Section 20.4(2) excludes as “representatives of the public employer,” the “administrative officer, director or chief executive officer” of major divisions of the public employer as well as the “first assistant” to these positions. *City of Eagle Grove*, 12 PERB 8459 at 7; *City of Evansdale & Int’l. Bhd. Of Elec. Workers, Local 288*, 11 PERB 8225 at 6.

The City contends that the police sergeant is excluded by section 20.4(2) as a “representative of the public employer” because he is a “first assistant.” Although the chapter 20 does not define “first assistant,” PERB has defined it as an employee “whose role in aiding the Chief Executive Officer of a major division with his or her managerial responsibilities is greater than that of any other employee in the division.” *Dubuque Cty. & Teamsters Local Union No. 120*, 14 ALJ 8700 at 12; *City of Eagle Grove*, 12 PERB 8459 at 10; *Jasper Cty. & AFSCME/Iowa Council 61*, 05 PERB 6766, 6782 at 16; *Madison Cty. & Todd Fonkert*, 82 HO 2197 at 7; *Lyon Cty. & Int’l. Bhd. of Painters & Allied Trades, Local 246, AFL-CIO*, 80 HO 1621 at 29.

This case is similar to the *City of Eagle Grove*. In that case, the issue before the Board was whether the assistant chief was excluded by section 20.4(2) as a “representative of a public employer” because he was a “deputy,” “first assistant,” or a “supervisory employee.” When analyzing whether the assistant chief was a “first assistant,” the Board did not determine (1) whether the police chief was an administrative officer, director or chief executive officer, or (2) whether the police department was a major division, elements necessary to prove that the employee is excluded as a representative of a public employer. *City of Eagle Grove*, 12

PERB 8459 at 7; *City of Perry & AFSCME/Iowa Council 61*, 90 HO 3888 at 22.

Instead, the Board examined whether Eagle Grove’s police chief had “managerial responsibilities,” and looked to PERB cases where the employer claimed “managerial status” for guidance. The Board stated:

While PERB has not thoroughly discussed what qualifies as “managerial responsibility” under this view of the first assistant exclusion, we take guidance from Board cases which have considered employer claims that certain employees are excluded from the coverage of the statute on the basis of their so-called “managerial” status. *See, e.g., Davenport Community School District & Davenport Education Association*, 75 PERB 72, at 17 (excluding as “managerial” certain employees who were significantly, rather than merely peripherally, involved in formulating, determining and effectuating the employer’s educational policies and programs and who, although not necessarily serving as supervisors in the employer’s hierarchical structure, nonetheless acted as representatives of the employer in the promulgation and implementation of policy); *Council Bluffs Community School District & Communications Workers of America, Local 7103*, 03 PERB 6414, 6515 & 6536 at 24 (affirmed by *Council Bluffs Community School District v. PERB*, Case [N]o. CVCV086308 (Pottawattamie County 2004)) (referring to “managerial” employees as only those who represent management’s interests by taking or recommending discretionary actions that effectively control or implement employer policy or who exercise discretion in formulating, determining and effectuating such policy).

City of Eagle Grove, 12 PERB 8459 at 10-11. In determining if Eagle Grove’s police chief had “managerial responsibilities,” the Board examined whether the police chief’s duties demonstrated “the chief’s effective control or implementation or his discretionary formulation, determination or promulgation of employer policy.” *Id.* at 11. The Board determined that the City failed to prove that the police chief had managerial responsibilities which necessitated the need for a “first assistant.” *Id.* at 12. The Board stated:

It necessarily follows that in the absence of a showing that the chief actually shoulders managerial responsibilities, we cannot conclude that the assistant chief aids or assists the chief in his performance of those responsibilities, much less that the assistant chief's role in that regard is greater than that of any other employee."

Id.

Using the Board's analysis in the *City of Eagle Grove*, the City must first establish that the police chief has "managerial responsibilities" before a determination is made whether the sergeant is a "first assistant." Consistent with the *City of Eagle Grove*, I conclude the record is insufficient to establish the existence of managerial responsibilities in the performance of his duties as the chief of police.

While there is evidence that during the last six months, Chief Hoyt has updated and revised various police department SOPs and job descriptions, the record is insufficient to establish the existence of managerial responsibility. Job descriptions were updated by making minor non-substantive changes such as correcting spelling, grammar and punctuation errors. In addition to other minor revisions such as changing titles and headings, SOPs were modified to reflect current practice. In revising the procedure with regards to complaints regarding police officers, the police chief did not formulate this policy since it was taken from his previous employer's policy. Further, the police chief could not implement the policy as it required the city administrator's approval. As a result, the chief's updating and revising SOPs and job descriptions falls short of demonstrating he had "managerial responsibilities" in the formulation, determination or promulgation of employer policies.

The record is also insufficient to establish the existence of managerial responsibilities with regard to budgeting. There is no evidence in the record as to the police chief's duties with regards to the formulation of the police department's budget. Although, Chief Hoyt approves the departmental expenditures, the record does not disclose the criteria or basis upon which Chief Hoyt reviews the expenditures or if the expenditures were approved as a matter of course. As a result, I cannot conclude the police chief's involvement in the budget process is significant and indicative of managerial responsibilities.

Based upon the totality of the facts and circumstances, I cannot find that Chief Hoyt's job duties and responsibilities were such that they amounted to managerial responsibility. There is little evidence of actual managerial authority visibly translated into tangible examples. Consistent with the *City of Eagle Grove*, I conclude that the City has failed to prove that Chief Hoyt's job duties and responsibilities are managerial which necessitates the need for a "first assistant." As a result, the Sergeant is not and has not been excluded from the bargaining unit on the basis of being the "first assistant" to the chief of police.

The City in their brief contends that the sergeant is presently excluded as a "supervisory employee" pursuant to Iowa Code section 20.4(2).

"Supervisory employee" means any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgment....

Determining whether a position is supervisory is a fact question involving “a case-by-case approach in which the agency gives practical application of the statute to the infinite and complex gradations of authority which may exist in employment.” *City of Davenport v. Pub. Employ. Relations Bd.*, 264 N.W.2d 307, 313 (Iowa 1978); *City of Des Moines & Des Moines Police Gold Braid Org.*, 09 PERB 7933 at 66; *City of Cedar Falls & Cedar Falls Firefighters Ass’n., Local 1366*, 06 PERB 6868 at 20.

Therefore, if the employee has any of the responsibilities listed in the previously quoted statutory definition of a supervisory employee, this is sufficient evidence of supervisory status. As a result, the record is examined for evidence that the supervisory authority actually exists, and is not simply on paper. What the statute requires is evidence of actual supervisory authority “visibly translated into tangible examples.” *City of Davenport*; 264 N.W.2d at 314; *City of Eagle Grove*, 12 PERB 8459 at 13-14; *City of Corning & Int’l. Union of Operating Eng’rs., Local 234*, 11 ALJ 8339 at 12; *City of Des Moines*, 09 PERB 7933 at 67.

Additionally, the statute further requires that the employee must have the authority to perform at least one of the specified functions listed in section 20.4(2), and with each function, the employee must (1) have the authority, (2) to use independent judgment, (3) in performing the supervisory function (4) in the interest of the public employer. *City of Davenport*, 264 N.W.2d at 314; *Cedar Rapids Cmty. School Dist.*, 15 HO 8707 & 8708 at 14; *City of Eagle Grove*, 12 PERB 8459 at 13; *City of Corning*, 11 ALJ 8339 at 12; *City of Des Moines*, 09 PERB 7933 at 66. The authority must require the use of independent judgement

and not be merely routine or clerical in nature. The employee's responsibilities must show that the position is substantially aligned with management. *City of Eagle Grove*, 12 PERB 8459 at 12; *City of Corning*, 11 ALJ 8339 at 12-13.

An employee may also be excluded as a supervisory employee, if the employee makes "effective recommendations" concerning one of the above-listed 20.4(2) supervisory functions. PERB has defined "effective recommendation" as a recommendation which under normal policy and circumstances, is made at the chief executive level or below and is adopted as a matter of course by a higher authority without independent review or *de novo* consideration. *City of Davenport*, 264 N.W.2d at 321; *City of Eagle Grove*, 12 PERB 8459 at 14; *City of Corning*, 11 PERB 8339 at 15; *City of Cedar Falls*, 06 PERB 6868 at 22.

The City, in their brief, argues that Sergeant McNally is a supervisor based on his authority to provide direction to police officers, take disciplinary action that does not involve suspensions or terminations, and to hire or effectively recommend the hiring of employees.⁵ In its brief, the City compared Sergeant McNally's supervisory role to that of the sergeants in *Woodbury County*. *Woodbury Cty. & Woodbury Cty. Deputy Sheriff's Ass'n.*, 1981 PERB 1605. However, the record in *Woodbury County* detailed the various duties and responsibilities of the sergeants whereas this record is more general in nature.

In the instant case, supervisory status cannot be found on the basis of his ability to hire as the sergeant clearly has no independent authority to hire. Nor

⁵ The City does not argue and there is no evidence in the record to indicate that the sergeant is a supervisor based on the authority to transfer, suspend, layoff, recall, promote, discharge, reward or adjust grievances of employees.

can I find that the sergeant's role in the hiring committee process rose to the level of an "effective recommendation." Although the existing job description did not reference the sergeant's hiring authority, the record reflects that the police department has hired one patrol officer and that Sergeant McNally was involved in that process. The first round of interviews was conducted by Chief Hoyt and Sergeant McNally and together they narrowed the pool of candidates to two applicants. The second round of interviews were conducted by a four-member committee. At the culmination of the interview process, the sergeant along with the other committee members made a recommendation.

PERB has previously found that a committee member's recommendation is not an "effective recommendation" unless the recommendation is adopted without input and review by other committee members. *City of Onawa & AFSCME Council 61*, 12 ALJ 8595 at 24. In this case, although the sergeant had input in the hiring committee's decision, the decision was made collectively. Because his recommendation was not adopted without input and review by other committee members, I cannot conclude that the sergeant is a supervisor based on his authority to "effectively recommend" in the hiring process. Accordingly, the sergeant is not a supervisor based on the authority to hire or to "effectively recommend" such action. *City of Cresco & Am. Fed'n. of State, Cty. and Mun. Emps., AFL-CIO*, 99 PERB 5905 at 8, *City of Onawa*, 12 ALJ 8595 at 24.

Nor based upon this record can I conclude that the sergeant is a supervisor based upon his authority to discipline or to effectively recommend discipline. McNally has coached an officer regarding the need to turn in time cards in a

timely manner, reminded officers to complete reports, and advised officers to clean out their patrol cars. Even assuming that these instances are verbal warnings, the City does not consider this type of a warning as disciplinary in nature. Further, PERB has consistently held that in order for an employee to be a supervisor, he must have more authority than the power to issue a verbal reprimand. *City of Davenport*, 264 N.W.2d at 321; *City of Des Moines*, 09 PERB at 7933 at 73; *City of Waverly*, 00 HO 6093 & 6094 at 14.

The City claims that Sergeant McNally has the authority to issue verbal and written reprimands. However, the record does not reflect that McNally has ever issued a verbal or written reprimand. Because the statute requires “evidence of actual supervisory authority ‘visibly translated into tangible examples,’” I cannot conclude that the sergeant is a supervisor based on the authority to discipline or “effectively recommend” discipline when this authority has never been exercised. *City of Waverly*, 00 HO 6093 & 6094 at 14.

Although Sergeant McNally performs work identical to that of the patrol officer, he clearly has additional responsibilities not shared by these officers. In order to establish supervisory status, the City must establish that the sergeant uses independent judgment in the interest of the City when assigning work and directing employees. *City of Corning*, 11 HO 8339 at 24. However, because the record is general in nature and does not contain “evidence of actual supervisory authority translated into tangible examples,” I cannot conclude that with these additional responsibilities the sergeant is in fact exercising independent

judgment in assigning and directing others. *City of Davenport*, 264 N.W.2d at 314, *City of Cedar Falls*, 06 PERB 6868 at 34.

McNally schedules the patrol officers. Because patrol officers generally maintain their current shift, this allows McNally to implement a schedule six months to one year in advance. As a result, the initial preparation of the schedule is routine and does not require the use of independent judgment. Although the chief testified that the sergeant has the authority to grant or deny time off, the record does not disclose any incidents of McNally exercising his authority, nor the basis, criteria or factors on which the decision was made. This type of evidence is needed to illustrate the sergeant's use of independent judgment in the interest of the public employer. Nor does McNally approve overtime when officers are required to work beyond their scheduled shift. Instead, there is a standing order that officers are to complete their assignments. Based upon the record presented, McNally's duties are essentially clerical, fairly routine in nature and do not require independent judgment.

Further, there is no evidence in the record which establishes McNally's role in scheduling training is anything other than routine in nature. Required training is governed by the date of training and adequate staffing levels. Requests for training initiated by the employee and McNally are granted after the chief determines that it fits within budgetary constraints and if staffing levels are met. To the extent scheduling involves the exercise of independent judgment, the record does not disclose the criteria or basis upon which the sergeant makes these decisions. While McNally has expressed a desire to schedule more

trainings, PERB has concluded that it is inappropriate to rely upon speculative evidence in order to find a statutory exclusion. *Hawkeye Cmty. Coll. & United Elec. Radio & Mach. Workers of Am.*, 02 PERB 6310, 6312 & 6321 at 15.

Although by virtue of rank, McNally is the first line supervisor and a source from which the officers may seek direction, there is no evidence in the record by which I can conclude that the sergeant is a supervisory employee based upon the authority to direct others. The totality of the record leads me to conclude that the sergeant's role in the direction of officers is that of a lead worker rather than a supervisor. The City has not established that the sergeant uses independent judgment when directing the patrol officers, instead, the sergeant relies on his tenure and experience.

The record indicates that patrol officers contact the sergeant to provide direction. If the sergeant is unavailable, the officer contacts the police chief. The record is silent on how often McNally provides direction. At hearing, McNally mentioned a situation (forcing entry into a residence) when an officer might call for approval "to execute said task." However, this testimony is without any detail and thus insufficient to establish whether these contacts result in the sergeant issuing an order which directed patrol officers to follow a particular course of action or the sergeant was contacted because of his skill and experience. In the *City of Cedar Falls*, the Board stated:

Although the goal is to exclude those who possess true supervisory authority, clearly the most persuasive evidence that an employee is a supervisor is "evidence of actual supervisory authority visibly translated into tangible examples." *City of Davenport v. PERB*, 264 N.W.2d at 314. The Court's observation that the section 20.4 exclusions are to be read narrowly further supports our tendency to

reject a claim of supervisory status unless it is persuasively demonstrated by the record. *Iowa Association of School Boards v. PERB, supra*, 400 N.W.2d at 576.

City of Cedar Falls, 2006 PERB 6868 at 34.

Similar to the *City of Cedar Falls*, I do not believe that the record “is clear enough to warrant the conclusion” that the sergeant possesses the supervisory authority to direct others due to the absence of tangible examples. The overall impression created by the record was that McNally’s leadership role was based upon his skill and experience. Because he is the most experienced and senior officer, he is relied upon for his knowledge about the department and familiarity with the community. As a result, his direction of the patrol officers is by virtue of his rank and experience. His responses are guided by police and departmental training, not by the exercise of independent judgement in the interest of management.

Based upon the totality of the facts presented, I cannot find that Sergeant McNally’s job duties and responsibilities were such that the sergeant position is supervisory. As a result, the position of sergeant is not and has not been excluded from the bargaining unit on the basis of being a supervisory employee.

Accordingly, I conclude the bargaining unit description as it is presently constituted does not include or exclude the position of sergeant.

Amendment of Unit Petition

Because the position is not within the existing unit, Local 238 seeks to amend the bargaining unit to specifically include the sergeant position. The

sergeant position is clearly appropriate to being included in the unit based upon the factors listed in Iowa Code section 20.13.

The parties only dispute is whether the position is excluded based on Iowa Code section 20.4. As previously discussed in above, PERB interprets the exclusions contained within section 20.4(2) narrowly because chapter 20 “is written in broad terms in order to allow a large number of public employees to be eligible for coverage under its provisions.” *Iowa Ass’n. of School Boards*, 400 N.W.2d at 576; *Cedar Rapids Community School Dist.*, 15 HO 8707 & 8708 at 15; *City of Eagle Grove*, 12 PERB 8459 at 6. Therefore, the City had the burden of establishing that the police sergeant is a supervisory employee. Because I have previously found that the City has not established that the police sergeant is a supervisor within the meaning of section 20.4(2), I find that the bargaining unit description should be amended to include the sergeant in this unit. Consequently, I propose the following:

ORDER

The petition for clarification of bargaining unit filed by the Chauffeurs, Teamsters & Helpers Local 238 (Case No. 102251) is DISMISSED.

The petition for amendment of bargaining unit to add the position of police sergeant to the list of included positions filed by Teamsters Local 238 (Case No. 102250) is GRANTED. The existing bargaining unit description is amended to read as follows:

INCLUDED: All regular full-time and part-time police officers, including the sergeant, all regular full-time employees in the

following classifications: Administrative Clerk, Emergency Services Clerk.

EXCLUDED: Elected and appointed officials; City Administrator, City Clerk, City Engineer, City Attorney, City Treasurer, Police Chief, Ambulance Director, Library employees and Director, Parks and Recreation Department employees, Supervisors and Director, Public Service Department employees, Supervisors and Director, confidential employees and all others excluded by Section 20.4 of the Public Employment Relations Act.

DATED at Des Moines, Iowa this 27th day of February, 2020.

Susan M. Bolte

Susan M. Bolte
Administrative Law Judge

Electronically filed
Parties served via eFlex